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RATIONALIZATION OF THE WORK OF THE COMMISSION

Letter dated 26 February 1999 from the delegations of Algeria, Bhutan, China, Cuba, Egypt, India, Iran (Islamic Republic of), Malaysia, Myanmar, Nepal, Pakistan, Sri Lanka, Sudan and Viet Nam addressed to the secretariat of the Commission on Human Rights

The delegations of Algeria, Bhutan, China, Cuba, Egypt, India, Iran (Islamic Republic of), Malaysia, Myanmar, Nepal, Pakistan, Sri Lanka, Sudan and Viet Nam have the honour to transmit the paper annexed hereto* which contains the comments, observations and alternate recommendations of the aforementioned countries on the report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112 (E/CN.4/1999/104).

The above-mentioned delegations believe that the attached paper would contribute to the discussions which would be held in this regard and request that it be distributed as an official document of the fifty-fifth session of the Comission on Human Rights.

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Annex

February 26, 1999

COMMENTS, OBSERVATIONS AND ALTERNATE RECOMMENDATIONS ON THE REPORT OF THE BUREAU OF THE 54TH SESSION OF THE COMMISSION ON HUMAN RIGHTS PURSUANT TO THE COMMISSION ON HUMAN RIGHTS' DECISION 1998/112

(Doc. E/CN.4/1999/104)

Introduction

A - General Comments

B - Detailed Analysis

C- Vision for the Future

Introduction :

1. The delegations presenting this paper appreciate the efforts and the work done by the Bureau in drawing up its report (hereafter 'the report') on the Review of the Special Mechanisms of the Commission on Human Rights (hereafter 'the review'). The report has the merit of stimulating a debate on many important issues affecting the work of the Commission on Human Rights and its mechanisms. However, the approach adopted in preparing the report seems to be partial and incomplete in many ways and the Bureau appears to have adopted a selective approach focusing on only some issues while neglecting the need for an overall perspective to the range of problems confronting the human rights arena, especially those identified in the Vienna Declaration and Programme of Action.

2. This paper is a response to the various proposals contained in the report of the Bureau and has been prepared with a view to enriching the debate on different ways and means of achieving genuine improvement in the human rights situation across the world. It contains an analysis of the proposals made by the Bureau and attempts to present alternate suggestions and recommendations. In doing so an attempt has been made to spell out a new vision for international cooperation in the field of human rights for the future.

3. The Bureau draws its mandate from Decision 1998/112 of the Commission on Human Rights[1] which was adopted by the Commission as a compromise following the tabling of a draft decision (L.2) and the reformulation of L-2 by a group of countries to include the main elements of draft resolution L.105 presented by Cuba at the 53rd Session of the Commission on Human Rights. The draft decision contained in L.2 asked for greater transparency in negotiations and the setting-up of a mechanism allowing for the maximum participation of all members of the Commission as well as other member states of the UN in the negotiating process in the Commission on Human Rights. The main elements of draft resolution L.105 tabled by Cuba in 1997 entitled "Restructuring and Revitalization of the Commission on Human Rights" called on the Commission to consider a) re-structuring of the agenda; b) documentation for the Commission; c) Commission's method of work (time-limits for statements, consultations during the Commission, participation of NGOs.); d) Review of Special Procedure System and e) Review of staffing policy.

4. Given this background, it is disappointing that the review has not sought to develop a vision which goes beyond the prevailing orthodoxy or put forward an alternate view for the promotion and protection of human rights.

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[1] Decision 1998/112 reads as follows: "At its 60th meeting, on 24 April 1998, the Commission on Human Rights, with a view to enhancing the effectiveness of the mechanisms of the Commission, decided, without a vote, to appoint the Bureau to undertake a review of those mechanisms with a view to making recommendations to the Commission at its fifty-fifth session".

General Comments

5. Ideally, the process of reviewing mechanisms should have been a technical exercise aimed at enhancing the effectiveness of the CHR mechanisms by ensuring that the mechanisms observe the ideals of objectivity, impartiality, universality and de-politicisation as well as the indivisibility of all rights. However, the Bureau's overall approach has been to equate effectiveness exclusively with enhanced monitoring and compliance. For the Bureau, the right to raise country situations must remain sacrosanct. Further, under the Bureau's proposals, every mechanism will be utilized to monitor country situations. This will virtually imply that the entire Commission on Human Rights session becomes an exercise focusing on Country Situations, which will be taken up thrice (a) during consideration of reports of thematic mechanisms, (b) the 1503 procedure, as well as (c) the agenda item on Country Situations.

6. The Bureau's proposals, which are supposedly meant to enhance the effectiveness of the Commission on Human Rights and its mechanisms, are in reality likely to be only counter-productive and lead to further politicization of the Commission on Human Rights and its activities. Moreover, it has failed to address the concern among developing countries regarding growing politicization, double standards and selectivity and the need to ensure that no country be allowed to use human rights to achieve political or any other non-human rights related objectives.

7. The 'effectiveness' of the Commission on Human Rights and its mechanisms is not derived from their capacity to coerce or pressurize countries through a narrow focus on monitoring and finger-pointing. It is a function of their capacity to engender confidence and cooperation through the identification of approaches that eschew politicization and selectivity, assist in the identification of solutions and facilitate the effective enjoyment of human rights at the grassroots levels, particularly through building and strengthening national capacities. It should be recognized, in this regard, that enlarging and strengthening the role of the monitoring mechanisms of the Commission on Human Rights; expanding the scope of discussions on country situations and using the Commission on Human Rights and its Bureau as tools for forcing States to cooperate with human rights mechanisms are unlikely to genuinely promote the effectiveness of the Commission on Human Rights.

8. It was with the above constructive approach in mind that the LMG commenced in 1996 a process that sought to remove the distrust and the North-South divide in the Commission on Human Rights, called for an end to politicization and selective finger-pointing and instead, the promotion of dialogue, cooperation and consensus building. This is also an issue which the Asian Group in its collective submission as well as submissions by many individual countries to the Bureau emphasized. However, these issues have been side-tracked by the Bureau and deferred for the future on the grounds that not enough consensus exists at present over what requires to be done.

9. Currently the human rights debate is framed around the rigid concept of the individual as a claimant and the State as the violator of human rights. The increasing pace of globalization and current developments however, proven that the structures and practices of globalization itself may often, directly and indirectly, be a cause of violations of human rights, not only with regard

to economic, social and cultural rights, but also with regard to civil and political rights. The significance of this phenomena is threefold:-

a. Reliance of human rights mechanisms which seek to apportion blame and punish states, without considering the prevailing international structures is obviously misplaced.

b. Since current international law applies only to identifiable action (i.e. perpetrated by the State) rather than practices associated with supranational forces (i.e. globalization), which provide the context of action, a monitoring approach may be capable of addressing the consequences of human rights violations, but not its causes.

c. The fact that international structures are a cause of human rights violations highlights the importance of international cooperation in the field of human rights.

10. From para.10 above it is clear that international cooperation has two aspects:-

a. International cooperation as an approach, to be contrasted with confrontation.

b. International cooperation as primary means of addressing the international structures which are a cause of human rights violation.

11. However, the report interprets international cooperation, legally and practically as merely an obligation of result. That is to say, the entire focus of the report is on what states are obliged to do, without any thought being given to the relevance, credibility and accountability of Commission on Human Rights' mechanisms. The fact that the pursuit of international cooperation demands greater emphasis on the promotional aspects (rather than an exclusive focus on compliance and monitoring) and the mainstreaming of technical cooperation in all human rights activities appears to have unfortunately been missed out.

12. The Bureau's report also appears to overlook the balances achieved in the Vienna Declaration and Program of Action. The VDPA reaffirmed the "universal, indivisible and interdependent and interrelated" nature of human rights and the need for the international community to "treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis". The Bureau's report, on the one hand, focuses mainly on promoting civil and political rights. On the other hand, it seeks to merge and cut down mandates related to economic, social and cultural rights. As a result, the need to ensure the principle of indivisibility of human rights by directly addressing the existing imbalance between Civil and Political Rights on one hand, and Economic, Social and Cultural Rights on the other, appears to have been neglected.

13. Moreover, there is also no reflection of "particularities", as contained in the Vienna document which recognized "the significance of national and regional particularities and various historical, cultural and religious backgrounds." It appears that the report intends to treat all countries alike, irrespective of their levels of development, religious and cultural orientations.

14. The problem of non-cooperation of states with mechanisms cannot be simply reduced to a lack of political will. For the vast majority of states, cooperation with and acceptance of the

mechanisms depend on objective elements, such as the sensitivity of the mechanisms to the specificities of the state concerned, its usefulness in addressing the problems encountered, as well as the level of encouragement that it can provide for progressive steps in the promotion and protection of human rights. It is in this connection that a code of conduct for the mechanisms becomes relevant and essential.

15. Paradoxically, while the Commission on Human Rights and its Bureau assisted by the High Commissioner for Human Rights will conduct enhanced scrutiny of mandatory compliance by states with mechanisms, states are asked to give up their responsibility for drawing up of a code of conduct - and this task is sought to be entrusted to the UN Secretary General (UNSG). In fact, States are not even expected to monitor and evaluate the functioning of the Commission on Human Rights mechanisms, which are expected to deal with these matters themselves and draw up best practices along with the High Commissioner for Human Rights. Clearly, it is the Commission on Human Rights and not the United Nations Secretary General who should determine the code of conduct for mechanisms and evaluate their performance on a regular basis.

16. A key element in the Bureau's approach has also been to expand its own scope and functions, far beyond those performed by any Bureau in the past and other such bodies elsewhere in the UN system. This includes extending to the Chairman of the Commission the power of appointment of, inter alia, members of the Sub Commission and providing a substantive monitoring and censuring role to the Bureau. Overlooking the fact that the rules of procedure provide only for a decision making role on procedural matters, the report seeks to make the Bureau an inherent and permanent part of the monitoring activities of the Commission on Human Rights. This is an unhealthy development and will only result in reducing the credibility of the Bureau.

17. From a legal point of view, the Bureau has a mainly representative nature and it does not enjoy any independent powers. Bureau members, first and foremost represent the views of their regional groups and their actions should therefore at all times fully reflect this. There is no scope or possibility for the Bureau to act and perform functions as a surrogate for the Commission on Human Rights in a manner that undermines the responsibility of the Commission on Human Rights itself and makes regional groups, from which the Bureau members draw their authority, irrelevant. An executive role for the Bureau is effectively precluded.

18. According to the report, regional groups are one of the main causes of politicization and the North-South divide in the work of the Commission. It must be pointed out, however, that politicization is not the result of developing countries coalescing around regional lines. Rather, the principle of regionalism is regularly used by one regional group as a means of pointing fingers at others.

19. The report also attempts to give the High Commissioner and the secretariat an intrusive monitoring capacity to the extent of suggesting that the High Commissioner may be one of the initiators of the Commission's country specific decisions. Such recommendations will only bring to naught efforts to increase cooperation and decrease politicization among states.

20. Though one of the objectives of the review was to avoid duplication and overlap, some of the proposals of the Bureau go exactly in the opposite direction. For example, the proposed reform

of 1503 will do nothing to alleviate the problem of duplication of reporting obligations (to both 1503 and thematic mechanisms) nor will it ensure that only allegations relating to gross or systematic abuses are referred to States. It will also undermine confidentiality and reduce the time frame for allegations reaching the Commission on Human Rights to an impractical level. Further, it will remove the objective filter of independent Sub Commission experts and place decisions in the hands of an untested and new 5-member expert body appointed by the CHR Chairman. Moreover, the reforms proposed envisage an increased role for the Secretariat in screening communications, a move which is politically inadvisable and practically impossible given the current workload of the secretariat.

21. For these reasons, screening of communications must continue to be done by an impartial body and the present structure of a Working Group on Communications comprising members of the Sub Commission and Working Group on Situations comprising members of regional groups must be retained. The only reform required is to have the Working Group on Communications meet twice, first to screen communications and decide what should be referred to Governments for a response and then, to decide on the basis of responses from Governments which communications should be referred to the Sub Commission.

22. Any attempt at reforming an institution should aim at improving its functioning and should not aim at its gradual de facto elimination. While the recommendation that the Sub Commission should not pass resolutions and should focus on its think- tank role is welcome, the remaining proposals are without adequate justification. Particularly so, when the Sub Commission has been engaged in a series of reforms on its own and is gradually increasing its attention to various issues pertaining to Economic, Social and Cultural Rights.

23. It has been contended, in the context of Working Groups, that consensus is not always necessary in the drafting of standard setting instruments. This proposal will only undermine the objective of securing international cooperation for promoting human rights on a universal basis. It would also go against the spirit of the relevant General Assembly resolutions which call for the establishment of standards which enjoy the widest possible support.

24. Finally, the report does not provide any vision or conceptual idea on how a balanced human rights approach can be constructed and maintained. There is also no reflection in the report on the need for the Office of the High Commissioner on Human Rights' to sustain all elements of the human rights program in a balanced and non selective manner through the adequate provision of staff and resources.

25. In conclusion, the recommendations contained in the Bureau's report should have been more balanced and should have had as its principal aim enhancement of the effectiveness of the CHR mechanisms through further promotion of international cooperation.

26. A premature and over ambitious effort to reform the Commission on Human Rights should not result in the deterioration of whatever has been achieved so far in the field of human rights, especially with regard to the limited levels of cooperation among states. (Particularly so in view of the inadequate resources of the Office of the High Commissioner on Human Rights and the fact that the cooperation of all countries is critical to the task of marshaling more resources).

27. As per the terms of decision 1998/112, the Bureau has completed its mandate by making available its recommendations. It is now up to the Commission on Human Rights and the States to decide the future course of action. The Bureau's proposals should be subject to wide ranging and intensive scrutiny and cannot be considered piecemeal. Towards that end, it is essential that an open ended Working Group of States be set up to examine all important issues that the Bureau has failed to adequately address and to review the Bureau's proposals with a view to modifying them, as appropriate.

Detailed Analysis

28. In para. 3 of its report, the Bureau states that various governments and specialized agencies had made written comments and proposals in connection with the review process. However, the report does not reflect all those proposals equitably. Furthermore, regrettably the Bureau did not involve regional groups in **all the steps** of the preparation of this report which appeared to give the Bureau the role of an "independent organ" with powers of its own, and not a geographical representation of member states. This might be an interesting idea, but simply does not reflect the current practice and legal premises of the Commission on Human Rights.

29. The only reference to L.2 in the entire text is in Para 6. Here, the Bureau merely refers to these issues, concludes that the limited deliberations till date do not provide sufficient foundation for immediate or definitive recommendations and has contented itself with encouraging sustained efforts in this area. Given the background of the review process itself, L.2 and L.105 should have been its starting points. It needs to be further noted in this regard that the Asian Group had in its collective submission clearly expressed the view that this exercise should be seen as part of the overall rationalization process of the work of the Commission on Human Rights and that it should be followed by a comprehensive review of the work of the Commission on Human Rights and the Third Committee of the United Nations General Assembly.

Alternate Recommendation 1 - Establish an open ended Working Group of States to discuss L.2, L.105 issues and the Bureau's report and proposals submitted by individual delegations.

30. The Bureau in para. 7 of the report has excluded any discussion of the mandate of the High Commissioner for Human Rights. At the same time, it has gone on to make recommendations to the High Commissioner in the light of General Assembly resolution 48/ 141. One of the most important aspects of this General Assembly resolution is the High Commissioner's role in implementing the Right to Development. Unfortunately, this area has been completely overlooked by the Bureau. Similarly, the creation and establishment of a balanced human rights program and the need to allocate adequate human and financial resources for capacity building, Right to Development, Economic Social and Cultural Rights, technical cooperation etc, are also missing from the report.

Alternate Recommendation 2 - Include the establishment of a balanced human rights program in the agenda of the above WG

31. Para. 9 of the Bureau's report overlooks the fact that the Sub Commission's mandate has been progressively refined and improved by the Commission on Human Rights particularly through resolutions adopted over the last few years. The analysis in para. 19 of the report recognizes that there has been a proliferation of special procedure mandates and it argues against arbitrary cut-backs or limitations to the mandates. However, the recommendations that follow propose actions contrary to this analysis by arbitrarily recommending the merger or elimination of certain mandates. The mandates that have been chosen for merger or elimination are those important for developing countries, for example the merger of the mandate of the Special Rapporteur on Structural Adjustments and the Special Rapporteur on Foreign Debt. The report fails to comment on concerns about an imbalance in the thematic and related mechanisms between Civil and Political Rights and Economic, Social and Cultural Rights.

32. The guiding principles as contained in para.11 of the Report fail to adequately express the aspirations of many governments from the developing countries in relation to the following :

- the need to avoid politicization, double standards and selectivity, or the use of human rights for achieving political and economic objectives;

- the need to strike a balance between individual and collective rights;

- the growing need, especially in this era of liberalization of trade and globalization of the economy, to implement and operationalize the Right to Development. In this way, the guiding purposes could be considered as a set back to the achievements of Vienna Declaration and Program of Action.

- On the other hand, the definition of and the purpose of the exercise of reviewing the mechanisms confuses two different concepts: "Enhancing the effectiveness" of the Commission mechanisms, which is the agreed purpose and "strengthening mechanisms", which is one of the possible means of achieving that purpose.

33. The Bureau in **Observations 1 & 2** describes its mission statement as enhancing the capacity of the UN to promote and protect human rights and to prevent their violations. It states that maximum de - politicization is critical to advancing the above purpose. Despite this statement, the substance of the recommendations in the report are aimed at tightening the monitoring mechanisms, expanding the scope of discussions on country situations and using Commission on Human Rights and its Bureau as tools in forcing States to cooperate with human rights mechanisms. Such efforts are likely to be only counter productive and lead to further politicization.

34. **Observation 3** makes clear the emphasis of the Report namely - enforcing cooperation of so - called "recalcitrant Governments" with the Commission on Human Rights and its mechanisms. According to the Bureau, *the essential foundation on which the effectiveness of the Commission and its mechanisms rests is the responsibility of all governments to cooperate fully with those mechanisms.* Without in any manner contesting the need for all Governments to cooperate with the Commission on Human Rights and its mechanisms, it needs to be pointed out that the above is a very simplistic view. This not only characterizes the monitoring driven approach to human rights but also ignores the fact that the large majority of countries are cooperating with

mechanisms. The need is to find out why some mechanisms engender cooperation while others do not.

35. Para. 15 of the Bureau's report does not address fully the obstacles to achieve such cooperation. Non-cooperation should not be seen only from the perspective of the lack of political will. One can perfectly conceive legitimate reasons for some cases of non-cooperation, namely subjectivity, double standards, selectivity, misuse of the mechanisms and sometimes special circumstances related to internal situations and conditions in a particular country.

36. Violations of human rights occur in every society and the effectiveness of the Commission on Human Rights must be judged by the results it produces on the ground in all parts of the world in terms of a higher level of protection for people. Real change occurs on the ground only as a result of a favorable international environment, the work of national institutions and through technical cooperation programs aimed at building national capacities. Monitoring cannot on its own create national will or solve any problem and if cooperation is not forthcoming, mechanisms also have a responsibility to bear in this regard. If governments do not cooperate, the Commission on Human Rights has a duty to examine why such situations arise and how they can be remedied. The Commission on Human Rights must ask itself whether it is merely an absence of political will on the part of Governments to change and improve which is the problem. If resolutions are tabled based on political and not human rights considerations, is a State obliged to cooperate ? By any estimate, the states who cooperate are far more than those who do not. Have their human rights situation automatically improved ? Would the Commission on Human Rights not be much more effective if it can channelise the collective strength of the international community towards such countries rather than engage in a futile exercise of trying to force those unwilling to cooperate due to whatever circumstances ? It must be also recognized that such coercion is beyond the capabilities of the Commission on Human Rights or the UN and the need is to help countries identify solutions and assist them with capacity building.

Alternate Recommendation 3 - Include the question of effective approaches for the promotion of human rights and international cooperation towards that end in the agenda of the above WG.

37. Para. 16 of the Bureau's report suggests the development of an appropriate strategy and a concrete action plan to secure the needed resources from the UN regular budget to ensure the effective implementation of the measures envisaged in this report. This suggestion must take the normal course of action by being discussed in the Fifth Committee in New York. In addition current constraints in the financial requirements for development programs (which have a direct link to the promotion and protection of human rights, including the decrease in the level of Official Development Assistance also needs to be kept in mind.

38. The Bureau has in its **Proposal 1** called upon the SG to develop an appropriate strategy and concrete action plan to secure in the next biennium, regular budget resources needed to ensure implementation of the measures in this report. It has also urged that any savings in conference servicing should be transferred to the Office of the High Commissioner for Human Rights' budget. It is premature to talk of resources to implement measures which have neither been discussed or agreed upon by the Commission on Human Rights. Moreover, the SG has given a clear assurance that any savings from anywhere in the UN system will go into development

activities. The Bureau's recommendation contradicts the SG's position. At any rate , the matter of more resources for the Office of the High Commissioner on Human Rights cannot be discussed without also discussing how there can be greater transparency in financial operations of the Office of the High Commissioner on Human Rights and how its current resources are being spent. It is essential that States examine whether the Office of the High Commissioner on Human Rights is treating all human rights as indivisible and whether there is a balanced allocation of staff and resources for the promotion of all rights. Similarly, the role of voluntary funds also deserves closer scrutiny. What is the nature of funding that different Special Rapporteurs get and is there any discrimination between them ?

Alternate Recommendation 4 - Include a review of the funding and expenditure of the Office of the High Commissioner on Human Rights as well as the balanced allocation of staff and resources within the agenda of the Working Group

39. In **Observation 4,** the Bureau has pointed to the need to ensure that the activities of its mechanisms represent a defensible and efficient use of scarce available resources. Its subsequent recommendations on the merging and elimination of mandates are however so timid that this view appears to have been forgotten.

Chapter II of the Report - Special Procedures

40. **Observation 5** of the Bureau describes the Special Procedures as one of the Commission's major achievements and reaffirms the Vienna Declaration and Program of Action's conclusion that the system should be preserved and strengthened and that States should cooperate fully with them. This is an acceptable proposition. However, these mechanisms cannot be imposed upon States and any attempt to do so would only be counter- productive. Going back to the Vienna Declaration and Program of Action, it must be noted that the language used in the above regard does not indicate anything mandatory ("All States are asked to fully cooperate".) The report should have reaffirmed the language of the Vienna Declaration and Program of Action.

Alternate Recommendation 5 - The Commission on Human Rights should reaffirm through a resolution or a decision the voluntary nature of cooperation with mechanisms .

41. Para. 19 of the Bureau's report refers to concerns regarding the proliferation of special procedure mandates and the consequent strains upon the Secretariat and States. While this concern must be addressed, it is important to keep in mind that this concern is being raised at a stage when creation of special procedures to look at various aspects of Civil and Political Rights is almost complete and a similar exercise has just begun in the field of Economic, Social and Cultural Rights.

42. **Recommendation 1** of the Bureau proposes a) merging the Special Rapporteurs on structural adjustment and foreign debt, b) converting the mandate on toxic wastes to human rights and environment, c) converting the Working Group on arbitrary detention into a Special Rapporteur, d) converting the Working Group on involuntary disappearances into a Special Rapporteur, e) terminating the mandate of Special Rapporteur on mercenaries and sending the issue to the sixth

committee and f) creating a new Special Rapporteur on contemporary forms of slavery instead of the Sub Commission's Working Group.

43. On one hand, the proposals target only mechanisms which have been initiated by developing countries. On the other hand, the large majority of country rapporteurs and thematic rapporteurs in the field of civil and political rights have been left untouched despite the fact there are clear cases of duplication. There are no recommendations whatsoever on how some of the Civil and Political Rights mandates can be merged or eliminated. For example, the Asian Group's suggestion of a merger of arbitrary execution with torture has not been taken into account. There are at present 16 country specific rapporteurs. The Bureau has not attempted at all to see if some of the mandates could be merged. For example, one Special Rapporteur could cover Chad, Equatorial Guinea and Somalia, while Rwanda, DROC, and Burundi could be covered by another person. Other candidates for merger could have been mandates relating to women and children and freedom of opinion and independence of judges. The independent expert on Internally Displaced Persons could have been done away with and OCHA asked to present reports to the Commission on Human Rights on the subject. Similarly, the Bureau should have also addressed issues such as the role of the Special Rapporteur on Torture vis a vis countries who have ratified the Convention Against Torture (CAT) or have submitted extensive reports on their national conditions and been subjected to scrutiny by the CAT.

44. The Bureau's recommendation that the mandates of the Special Rapporteur on Structural Adjustment and the Special Rapporteur on Foreign debt be merged will increase the existing imbalance between individual rights and collective rights, especially at a time when the international community is struggling to address the negative effects of globalization of the economy and the liberalization of trade and the different challenges resulting from their implementation. As for the mandate of the Special Rapporteur on Toxic Wastes, it should be kept untouched as there is a need to study the contradictions in the legislation of certain countries in relation to production and export of toxic waste.

Alternate Recommendation 6 - Include the issues raised in paras 44 and 45 above in the agenda for discussions in the Working Group

45. In **Observations 6 - 10**, the Bureau discusses country situations. To begin with, it makes a categorical assertion that the Commission on Human Rights must have an effective capability to adopt country specific measures. The Bureau goes on to make a qualified statement to the effect that such actions should *preferably be* on the basis of a consensus, *if possible* with the engagement of the country concerned. It further adds that no procedural device can guarantee a consensus.(No explanation has been given as to why the procedure cannot be amended). Finally it makes some references to the need for de - politicization, introspection and increased reliance on the reports of thematic mechanisms. It then expresses the view that the limited discussion till date does not provide a basis for concluding whether it would be *possible or appropriate to establish procedures that might complement, curtail or replace the prerogative of governments in initiating country specific proceedings*. It further adds that the Commission should give *more in depth consideration to this question in future.*

46. It is evident from the above that insufficient attention has been given to the L.2 and the spirit of consensus and constructive approaches, based on the principles of non-selectivity, dialogue

and cooperation which underpinned it. The Bureau has not gone into the substantive aspects of whether country specific resolutions work and whether such resolutions produce concrete results on the ground. To argue that countries which were confronted with such resolutions in the past consider it a good idea now is a very limited perspective. These are exceptional cases and issues of distrust and the North - South divide do not arise from such examples. Country resolutions and the entire agenda item on country situations must be seen in the larger context of the Commission on Human Rights and the impact that politicization as a result of these resolutions has on the entire work of the Commission on Human Rights. It is not one set of countries alone who have human rights problems. Such problems exist in all parts of the world. Does the Bureau's position imply that all countries should have resolutions moved against them and especially so in a situation where it is only one group of countries alone who selectively trigger such resolutions against others. At present resolutions against some countries are selectively triggered by a particular group of countries. It is also not clear why the Bureau has decided to qualify its calls for consensus instead of making it mandatory, particularly for country resolutions. In fact both the elements of consensus and the engagement of the countries concerned are the most important factors influencing the effectiveness of the Commission's actions. Since the entire process of the review of mechanisms commenced with the L.2 and now that the Bureau has chosen to leave this matter for the future, it is only legitimate that all other recommendations in the report be also kept pending till this issue is resolved.

47. An interesting measure proposed by the Bureau in the above regard to "reduce the adversarial atmosphere and politicization surrounding specific country situation" is to downplay the "regional or block interests or matters of north-south conflict." It should be noted that the practice of working through regional groups is widespread throughout the UN system. Far from contributing to an adversarial atmosphere, this principle reflects the realities of the international system. At any rate, developing countries are not the ones who have abused it.

48. Paras 23 and 24 of the Bureau's report call for greater recognition of the role of the thematic mechanisms as authoritative sources of information and analysis about violations of human rights in all parts of the world in a way which changes the nature of their mandate. This, however, might increase the politicization of the work of the Commission since it suggests an expansion of the mandate of the thematic procedures which enjoy no consensus at this stage. The Bureau's proposal that greater recognition be given to the role of the Commission's thematic mechanisms as authoritative sources of information and analysis about violations of human rights in all parts of the world needs to be viewed carefully. At best, any Special rapporteur's report is only an individual's assessment of any situation and cannot be considered as an authoritative source.

Alternate Recommendation 7 - Include an in- depth review of the country situations item within the agenda of the above Working Group. (b) All discussions on "country situations" should be held in confidential sessions. (c) Consideration shall be given to biennialise the examination of human rights situations in countries which are at present subject to annual resolutions if objective non-political elements justify it (d) The Bureau should provide arrangements for negotiations on country situation resolutions. The negotiations should be chaired by a member of the Bureau with the participation of the representative of the sponsors and the representative of the country concerned. (e) There should be periodical review of monitoring of country situations with a view to their termination, according to objective non-

political merits of each situation. (f) Ways and means of ensuring objective non-political criteria for the initiation and termination of country situation resolutions should be sought.

49. In **Observation 11**, the Bureau describes some general goals for the work of special procedures such as frank and genuine dialogue, identification of opportunities for sound advice, technical assistance to willing governments, objectivity and quality of fact-finding etc. However, it has completely overlooked the need to ensure that the OHCHR and the international community follow up on recommendations for technical cooperation. There is little point in criticizing the human records of states and advising them to initiate projects of technical cooperation, if the international community is not willing to back up such criticism and advice with the requisite transfer of resources to developing countries.

50. Although para 25 of the Bureau's report addresses the main features specifying the roles and tasks of the mechanisms, it fails to address some of the most important, and frequently raised concerns of many countries such as the need to ensure the respect of national legislation, avoid double standards, respect the universality and indivisibility of human rights, the need to consult with the country referred to in all matters before formulating any conclusions and the necessity to ensure the respect of national traditions, cultural and religious particularities.

Alternate Recommendation 8 - Include within the agenda of the above Working Group concrete ways and means to enhance resources for the technical cooperation program, including the allocation of a specific percentage within the OHCHR regular budget for this purpose.

51. In **Observation 12**, the Bureau has described the practice of issuing urgent appeals as a vital role of special procedures. Further, in **Recommendation 2**, it has said that the Chair of the Commission should play a role in assisting special procedures obtain responses to such urgent appeals. The ECOSOC rules of procedure which define the powers of the Chairman and the officers of the Commission in an exhaustive manner, do not make provision for any such substantive functions. The Chairman of the Commission on Human Rights and the Bureau, as provided for in the rules of procedure, have decision making powers only with regard to procedural matters. Such a move would only lead to further politicization and undermine the future functioning of all Chairpersons and the Bureau. It will result in a reduction of independence and credibility on the part of the Chairman and undermine his credibility as an impartial leader. It will further lead to an uncalled for expansion of the role and functions of the Bureau.

Comment 1 - Recommendation 2 of the Bureau should be rejected outright.

52. In **Observation 13**, The Bureau calls for mainstreaming of cross-cutting issues including women's rights, children's rights, etc. Para 27 however fails to mention the RTD, despite its centrality as one of the most important human rights issues that have a cross-cutting character.

53. In **Observation 14**, the Bureau outlines the qualifications and qualities which persons selected to perform the duties of special procedures should have. While it stresses independence, objectivity, etc. it has overlooked the matter of equitable geographical representation.

54. In **Recommendation 3,** the Bureau proposes that all appointments to special procedure posts be made by the Chair of the Commission, following consultations with the Commission's Bureau. This seems contrary to the need to ensure the wide acceptance of the special procedures. All such appointments should be made by the Bureau in consultation with the regional groups and not merely with the other members of the Bureau. This also includes giving full consideration to any objections by the concerned state. It is to be recalled states become members of the Bureau in their capacity as representatives of regional groups and not in their independent capacities.

Alternate Recommendation 9 - Bureau's recommendation 3 should be rejected and the CHR should adopt a procedural motion clarifying that all appointments should be made only with the approval of regional groups.

55. In **Proposal 2,** the Bureau asks the Office of the High Commissioner on Human Rights to develop and maintain a roster of persons possessing the necessary qualifications based on submissions by governments, NGOs, etc. The practice, in this regard, till date has been that States alone nominate candidates for positions of Special Rapporteurs. This Bureau has for the first time started accepting nominations from NGOs, OHCHR, etc. While such a practice has been adopted, the fact remains that it has no formal approval from the CHR or from the regional groups. It also needs to be mentioned that the OHCHR has never been transparent with regard to the rosters maintained by it for various appointments under the technical cooperation program etc.

Alternate Recommendation 10 - CHR should adopt a procedural motion clarifying that only states have a locus standi to nominate candidates and that the national of a State should not be appointed without its consent.

Alternate Recommendation 11 - OHCHR should be asked to issue letters to all States inviting nominations of candidates to form part of its roster and to publish on an annual basis a report containing an updated list of experts on all its rosters with their qualifications, nationality etc.

56. In **Recommendation 4,** the Bureau calls upon the ECOSOC to adopt a general decision authorizing an immediate provisional start to the implementation of all new mandates, recommends that the ECOSOC hold a special spring session to consider CHR proposals regarding special procedure mandates and that the regular May organizational session of ECOSOC include the consideration of CHR proposals. The Bureau is here clearly encroaching into the territory of ECOSOC. The impression that the Bureau gives is as though ECOSOC has only the Commission on Human Rights as its concern and no other subsidiary body. These issues are matters which have to be resolved by ECOSOC, based upon its own precedents and practice. It may not be possible for the CHR alone to be accorded special treatment.

Comment 2 - CHR has no role in the above matter which is purely within the mandate of ECOSOC to consider.

57. In **Recommendation 5,** the Bureau recommends continuing the practice of standard three-year terms for thematic mechanisms. It, however, proceeds to suggest that country specific mandates can be for more than one year on a case-by-case basis. This is a proposal which is very difficult to understand. There is no guarantee that the Commission will decide to extend the duration of country specific mandates year after year. To provide a longer period of time for country specific mechanisms would be to pre-empt the decision-making prerogative of the Commission on Human Rights.

Comment 3 - The second part of Bureau's Recommendation 5 should be rejected

58. The Bureau in **Recommendation 6** states that no particular individual should serve more than six years in a particular position. As a transitional measure, it suggests that office-holders who have served more than three years, be permitted to continue for another three years. At the same time, the Bureau also recommends that all such individuals *should be eligible for reassignment to other mandates*. While the first part of the Bureau's recommendation is welcome, it is difficult to understand why an individual who has already served six years should be eligible for reassignment to other mandates. Such a practice would only lead to a few individuals, who form part of the human rights industry reappearing again and again as different Special Rapporteurs.

Comment 4 - The first part of the Bureau's Recommendation 6 is welcome. Its second part should be rejected

59. **Observation 16** and **Proposal 3** of the Bureau's recommendation deal with the need to respect privileges and immunities accorded to holders of such posts. The Bureau calls upon the Secretary General to review UN practice in terms of granting Laissez-Passer. This issue of immunities appears to have been raised in the context of the Param Cumaraswamy case and any view in this regard can be adopted only on the basis of the final verdict of the International Court of Justice (ICJ). In this context, the precise nature of the privileges has yet to be decided upon by the ICJ. The Bureau has therefore, preempted the decision of the ICJ. Notwithstanding that, Special Rapporteurs are not employees of the UN. So, they cannot enjoy Laissez Passer. While States should respect privileges and immunities accorded to holders of mandate, it is also incumbent on the individuals to conduct themselves with dignity and in full respect for national legislation as well as national traditions, cultural and religious particularities.

Comment 5 - Bureau's Proposal 3 should be rejected

60. In Para 35, the Bureau has stressed the importance of special procedures upholding the integrity of their offices through the manner in which they discharge their responsibilities. It has said that a *code of conduct warrants careful consideration* and pointed out that the *special procedures themselves have expressed support for the idea*. However, in **Proposal 4**, it then goes on to ask the SG to expedite the work on preparation of such code of conduct. According to the Bureau, once such a code of conduct is established, allegations regarding infringement of the code by any office holder should be *examined by the annual meeting of special procedures and observations or recommendations reported to the Commission*.

61. The fact that the Bureau has accepted the idea of a code of conduct is most welcome. However, since the special procedures are the creations of the Commission, any such code must be prepared by the Commission itself and not the SG. The role of the SG is to facilitate the work of special procedures. The responsibility of determining what should be their conduct, whether any infringement has taken place and if so, what action needs to be initiated are all issues within the prerogative of the Commission. It is, therefore, imperative that work be recommenced on preparing such a code of conduct for all special procedures, using the draft resolutions L.86 and L.87 of two years back as the first draft for the same.

Alternate Recommendation 12 - Proposal 4 should be rejected. Commission on Human Rights should determine the code of conduct and evaluate the performance of the mechanisms. The draft resolutions L.86-87 of 1997 should be revived.

62. In **Proposal 5**, the Bureau has asked the Office of the High Commissioner for Human Rights to provide effective and efficient administrative support and *full and timely recompense* for all direct expenses in connection with the fulfillment of their duties. It has also asked that consideration be given to the feasibility of granting such office holders $1 per year UN staff status. The full import of this proposal is not clear. What does such UN staff status imply, why should *direct expenses* be repaid and what is the financial implication of such a decision? Who would determine what are the expenses which can be repaid ? Can such issues not be resolved through Programme Budgetary Information(PBI)? All these are issues which need to be clarified. There should be harmonization between the support and expenditures that each mechanism gets. Some mechanisms are generously treated while others are starved of resources. Whether or not direct expenses are compensated for, there should be uniformity in the financial and human support given to each mechanism.

Comment 6 - Proposal 5 should be rejected as impractical and un - implementable

63. In **Observation 16**, the Bureau has stressed the need for special procedures to be able to work effectively with governments, NGOs, etc. It has commended the effort of the Office of the High Commissioner for Human Rights and special procedures in developing a manual and asked for continuing the development of 'best practices'. While there can be no objection in principle to the development of a manual such as above, this is also an issue closely related to the Code of Conduct as well to the issue of the approaches for the promotion of human rights. The Office of the High Commissioner for Human Rights and special procedures cannot on their own develop a manual. The contents of any such manual should be subject to intergovernmental scrutiny.

Alternate Recommendation 13 - The Commission on Human Rights should determine what goes into the Manual referred to in Observation 16.

65.The Bureau in **Observation 17** expresses the need for grassroots awareness of the workings of special procedures; the need to ensure that groups or individuals providing information to special procedures do not suffer reprisals, the need to provide acknowledgments and progress reports to persons submitting communications, etc. It has pointed out at the same time that it is incumbent on special procedures to *take every possible step and observe all appropriate principles and practices to verify the reliability of all information brought to their attention.* The last part of this observation is extremely important from our perspective and forms part of the

Asian Group recommendations. The Bureau, however, has tucked this away in an obscure corner and not given it the prominence that it deserves. Moreover, the entire report contains no substantive consideration of the role played by NGOs and whether the time has not come for their participation and involvement to be fine-tuned.

Alternate Recommendation 14 - Ways and means of fine tuning NGO participation so as to improve the efficiency of the Commission on Human Rights and Sub Commission sessions should be comprehensively discussed and amendments , as required, proposed to the ECOSOC procedures on NGO accreditation and participation.

66. **Observations 18 & 19** deal with the cooperation of governments with mechanisms. According to the Bureau, States should assure an invitation to any and all mechanisms that demonstrate a reasonably substantiated interest in conducting a direct mission. It has also called upon governments to respect the basic terms of reference for direct missions. This is an effort to convert a voluntary action into an obligatory or mandatory duty. The Bureau has, in fact, even referred to "sanctions" in cases where cooperation is not forthcoming. Accepting the need for cooperation on the part of states, it must be kep in mind that such cooperation is a voluntary action and not a mandatory duty. To argue otherwise would be to misrepresent both the Vienna Declaration and Programme of Action and the UN Charter on their interpretation of international cooperation.

Alternate Recommendation 15 - The Commission on Human Rights should determine the contents of the "basic terms of reference" mentioned in Observations 18 & 19.

67. **Recommendation** 7 is a direct follow-up to the above observations. The Bureau has suggested that at each session of the Commission there should be regular, focused and systematic deliberations of serious incidents or situations involving a failure or denial of cooperation by governments with the Commission or its mechanisms. This recommendation is tantamount to creating a new agenda item on country situations since a determination of which country is cooperating or not cooperating will be done only on political terms. Many countries which are subject to country resolutions reject Special Rapporteurs appointed under these resolutions because they perceive the resolutions as politically motivated. If the above proposal comes into effect, such countries would be pilloried first under the agenda item on country resolutions and then during the above discussion for their refusal to permit the Special Rapporteurs concerned visit their countries. This proposal will not lead to better cooperation but more politicization and confrontation. The proposition of discussing each case of "non-cooperation" is a presumption of guilt and contradicts the voluntary nature of cooperation. True cooperation through genuine dialogue cannot mean condemning a state for legitimately having different views from those held by the mechanisms.

Comment 7 - Bureau's recommendation 7 should be rejected

68. The Bureau in **Observation 20** states that *whenever possible*, governments should be given a reasonable opportunity to review the reports of special procedures prior to their finalization and to provide comments/clarifications. It states that any such input should be made available to the Commission in the form of an addendum to the report where the Government concerned *so wishes and time permits*. Here the Bureau has taken up a recommendation of the

Asian Group. However, instead of making the above procedure mandatory, it has left it to the discretion of the Special Procedure/ Secretariat by using the words *wherever possible*.

Alternate Recommendation 16 - Bureau's Observation 20 should be made a mandatory practice

69. **Observation 21** deals with the continued holding of annual meetings of special procedures and the need to have better coordination amongst the special procedures and with other components of the UN. One of the biggest burdens which States face today is repeated communications on the same subjects coming from different mechanisms. The Office of the High Commissioner for Human Rights has till date not been able to coordinate this process. The Bureau has completely ignored the fundamental issue of duplication of communications received from special procedures and under the 1503 procedure. Moreover , while annual meetings of special procedures might be a useful exercise, it is also a matter of concern that such meetings are held in camera and States have little knowledge of the discussions that take place or the views which are expressed by individual special rapporteurs. In the interest of transparency and openness, all such meetings should be fully open to any State which might be interested in observing the meeting.

70. Para. 44 of the Bureau's report fails to justify the use and foundation of such extreme expansion of the exchange of information and coordination of activities among the Commission's special procedures and "other relevant components of the UN and other International Institutions", especially at a time when financial constraints negatively affect the current situation in the field of human rights. The only objective which logically can be envisaged by such expansion, which is not accepted by many countries, is the creation and introduction of new conditionalities in the wider spectrum of international cooperation under the pretext of protecting human rights.

Alternate Recommendation 17 - Coordination of communications should be the principal issue on the agenda of the above meetings of Special Rapporteurs. All such meetings should be open to Governments.

71. **Observation 22** calls for the development of a strategy to secure and administer regular budgetary resources for the mechanisms. **Proposal 6** calls for an effective system of annual work planning and use of modern technologies etc. **Observation 23** underlines the importance of continuing and enhancing coordination between the Special Procedures and substantive activities of the High Commissioner. While all the above suggestions are welcome, the Bureau has once again overlooked a critical issue of considerable concern to developing countries namely, the issue of a balanced allocation of staff and resources to all elements of the human rights program and in particular Economic, Social and Cultural Rights (ESCR), Right to Development (RTD) and technical cooperation. At present, there is very little transparency with regard to how the resources available to the Office of the High Commissioner for Human Rights are being spent and what amounts are being allocated for ESCR, RTD etc. Before any strategy for increasing resources is evolved, there should first be transparency with regard to the funding that exists at present, including voluntary funds. Further, there should be a clear commitment to enhance resources for the hitherto neglected aspects of the human rights program such as RTD before support is sought for a strategy to raise overall budgetary resources.

72. **Recommendation 8** deals with preparation and circulation of reports. It calls for advance, unedited versions of Commission on Human Rights reports to be made available to all delegations as soon as they are submitted to the Office of the High Commissioner for Human Rights. It asks for all reports to include an executive summary which will focus *on the recommendations in the report and on the question of cooperation of governments with the mechanisms*. All such executive summaries should be separately compiled and once again this compilation should have a *separate chapter regarding serious incidents of denial of cooperation with the Commission or its mechanisms*. It recommends that mechanisms should be also permitted to *present updates and reports addressing urgent developments* and that they should be *brought to the Bureau's attention.*

73. This recommendation seems to have been made with the purpose of trying to enforce the cooperation of states with mechanisms. While executive summaries by themselves are welcome, the attempt to focus them on so-called non-cooperating states appears to be an invitation to the special procedures to specifically target some countries. This will only undermine the integrity and credibility of the procedures. As mentioned earlier, adoption of this proposal would only lead to the creation of another country situations item and politicize the work of the Commission further. Furthermore, it sounds illogical at a time of too many reports to ask for one more report which compiles all executive summaries together. We note again that such a trend would create for the Bureau a substantive role which exceeds their mandate. In fact what is completely lacking in such a simplistic or mechanical monitoring driven system is the recognition that compliance depends upon an objective assessment of the national context. Do these reports refer to States where the rule of law prevails and where there exist ample domestic remedies or are we assessing the reliability of NGO reports? If these factors are not taken into account the conclusions drawn are almost certain to be misplaced or erroneous.

Comment 8 - Bureau's Recommendation 8 should be rejected as superfluous and duplicative

74. **Recommendation 9** also flows from the previous recommendations. Here the Bureau suggests that *the executive summaries be used as the principal basis* for organizing a discussion on the *observations and recommendations of each mechanism, the extent to which past recommendations have been implemented, concerns about the degree of cooperation including requests to visit countries*, etc. It says that the governments concerned should be encouraged and offered every opportunity to explain its position and that a dialogue such as the above should be commenced at the forthcoming session of the Commission on Human Rights.

75. In effect, the proposal provides for a system by which a large number of countries will be put in the dock - first for not inviting mechanisms and then, if they have invited, for not implementing recommendations etc. This would result in the complete transformation of these discussions into another country situations debate and makes the Commission on Human Rights into an inquisition chamber where governments would be called to the dock and asked to explain. Moreover, the Bureau has not said anything about where the time will come for such a debate and it is possible that such a measure will then be used as an excuse for further increasing the period of the Commission on Human Rights.

Comment 9 - Bureau's Recommendation 9 should be rejected as superfluous and duplicative

76. In **Recommendation 10,** the Bureau calls for a new document to be prepared by the Office of the High Commissioner for Human Rights in September of every year which summarizes the progress realized and steps taken in connection with the recommendations of the mechanisms for the Bureau to review in advance of the human rights debate in the GA . The Bureau would then consider what appropriate steps it should take or advice it may offer to concerned parties regarding follow up. The Bureau would hold private dialogues with concerned states and then it would conduct a public briefing for representatives of all Commission members on any observations or conclusions it may consider appropriate to report. These ideas are highly objectionable. The concept of a single document prepared by the Office of the High Commissioner on Human Rights in collaboration with the special procedures in September each year to be reviewed by the Bureau gives: (a) the Bureau a monitoring and censuring role; and (b) also gives the Secretariat a role which is not acceptable. Obviously, this is an attempt to make the Bureau into a superior monitoring body or a judge. This does not only exceed the Bureau's legal competence but would exacerbate political confrontation. No such role has been envisaged for the Bureau nor can any such role be acceptable. The secretariat has no locus standi passing value judgments on whether states have implemented recommendations or not, and to have them do so, would impugn their non-political and impartial character. This is a task only the special procedures themselves can perform. Similarly, the Bureau has no locus standi sitting in judgment over states let alone conducting private meetings on follow up or public meetings to draw conclusions.

Comment 10 - Bureau's Recommendation 10 should be rejected as superfluous, duplicative and a threat to the credibility and impartiality of the Bureau

77. **Observation 24** calls for the results of the work of special procedures to be disseminated to *UN development and other agencies* that might be in a position to take advantage of recommendations for technical cooperation or *to other components of the UN* and to NGOs etc. This observation raises inter alia the fear that these recommendations will be sought to be used by agencies and donors as conditionalities for development assistance. It also raises concerns about the ambiguities and potential abuses of the concept of human rights. It is also interesting to note that the responsibility for technical cooperation is being sought to be passed onto other agencies and the Office of the High Commissioner for Human Rights is completely excluded from this task.

78. Para. 50 of the Bureau's report introduces new prerogatives and privileges to the civil society in monitoring the respect of members states of their obligations in the field of human rights which are not included even in the Declaration on Human Rights Defenders. Contacting "interested groups and individuals" within States is a wide open door for mutually confrontational accusations which cannot help the cause of human rights. It should be reiterated that monitoring based exclusively on reports of NGOs and taken as "evidence" does little to promote human rights.

Comment 11 - Bureau's Observation 24 should be rejected. The primary role of the Office of the High Commissioner for Human Rights in technical cooperation should be emphasized.

Chapter III - 1503 procedure

79. Para 52 of the Bureau's report highlights what it considers to be the deficiencies in the 1503 procedure. It states that the procedure is ineffectual, complex and highly cumbersome. Two aspects which the Bureau leaves out, however, is the fact that the procedure was initiated in the late sixties at a time when none of the other mechanisms existed. As of now, the 1503 procedure leads to duplication within the system. This has not been, however, recognized by the Bureau.

80. After identifying the problems which plague the system , the Bureau concludes in **Observation 25** that this procedure continues to provide an important channel of redress. The two justifications it provides for arriving at this conclusion are a) that countries not parties to treaty based communications procedures and vulnerable groups who otherwise have difficulty in securing access to human rights institutions find this useful and b) there is value in maintaining the confidential process insofar as this helps secure constructive engagement by Governments concerned.

81. First of all, countries , irrespective of whether they are parties to the optional protocols or not, come within the ambit of Special Procedures such as torture, disappearances etc. They receive communications from these procedures and respond to them. Similarly, the Special Procedures receive communications in exactly the same manner as that of the 1503 procedure. Anyone can write an ordinary letter complaining of human rights violations and if the Special Procedure deems it worthy of referring to the Government concerned, they do so. In fact, the critical difference is that while under 1503 procedure almost every letter, including crank letters are sent to Governments by the Secretariat without any weeding out, Special Procedures, at least to some extent, apply their minds with regard to whether the communications should be referred or not. Finally, as far as the value of confidentiality is concerned, the views expressed by the Bureau are relevant. It is due to the confidential nature of the procedure that it continues to receive the highest percentage of responses. However, what is required is not a duplication of the public procedure on country situations within the confidential procedure but the conversion of the public 'Country Situations' debate into a confidential one. Such a move, even on an experimental basis, might facilitate constructive engagement and genuine dialogue instead of the current confrontation and acrimony.

82. **Recommendation 11** of the Bureau proposes an alternate 1503 procedure which involves the creation of a new body of five independent experts appointed by the Chairman. However, no reasons have been provided as to why the current arrangement of five Sub Commission members sitting as a Working Group on Communications is incapable of doing the job. According to the Bureau, the new body will meet first in September to look at communications and any *Government replies received to date* (implying thereby that the present practice of sending communications to states without a proper examination of whether they meet the proper criteria will continue) . It will decide which communications should be referred to states for clarification. It will then meet again in January to examine once again the communication, replies from governments, *and any additional relevant information from other UN sources, including treaty bodies and Special Procedures.* (implying thereby that the communication will be referred to all these other sources, subverting thereby the confidentiality of the whole exercise). This body will then decide what situations will be referred to the Commission and also *identify main issues of*

concern as well as suggested ways of addressing these concerns. In effect, a new body of independent experts who have no mandate under international law, will sit in judgment over countries who are not under any treaty obligation to submit themselves to any such scrutiny. In addition, instead of electing the experts responsible for examining the situations, it is suggested that the Chairman of the Commission appoints the new body consisting of 5 experts, which in itself is a setback to the process of ensuring that the review of the mechanisms is done through a more democratic process involving all geographical groups.

83. Then, there is the second stage of the exercise. Here the Commission on Human Rights will first meet in the beginning of the session for a *meaningful dialogue* and then at the end of the Commission, once again to decide on *appropriate action, including whether the matter should be taken up in public procedure,* which according to the Bureau should be *the principal option* in cases where the government's cooperation has been inadequate. It appears, therefore, that the proposal aims at bolstering and strengthening the discussions on country situations.

84. What is also interesting in the above regard is that the Bureau goes on to stress the important role of the Office of the High Commissioner on Human Rights *in referring communications to governments and in sifting out communications that appear to be manifestly unfounded.* The biggest problem States have repeatedly pointed out is the difficulty the Secretariat faces in performing this task efficiently. Surely, to restructure the whole 1503 process and then at the end of it all, to ask the Secretariat to weed out manifestly unfounded cases is not the answer to any problem.

85. The end result of the Bureau's efforts is to substitute a two level screening process for the current four level screening process. Considering all the infirmities that we know exist within the process, this could be dangerous and will lead to exactly what the Bureau is supposedly trying to avoid , namely *situations that hardly deserve the attention of the Commission on Human Rights reaching that level with disproportionate consequences for Governments and negative implications for the credibility of the Commission on Human Rights.* What now happens over one to two years will now take place within a span of six months, a period hardly adequate for most countries to even obtain factual responses from the grassroots.

86. In conclusion, the best option is to retain the status quo with a small change in the present system by which the present Working Group on Communications meets twice a year, first to decide what should be referred to States and the second time to decide what should be referred to the Sub Commission.

87. In the above regard, it must be also mentioned that fairness demands that at each stage of the 1503 process when a situation is referred from one body to another, the country concerned should be informed by the body clearly of the reasons why the situation is being referred and provided with a detailed questionnaire on the additional information and clarifications that the concerned government is expected to provide. Adopting such a practice will ensure a more genuine and fruitful dialogue with the country concerned.

Alternate Recommendation 18 - Status quo should be retained on the 1503 procedure with provision for the Working Group on Communications to meet twice every year.

Chapter IV - Sub Commission

88. In **Observation 27,** the Bureau states that "incremental efforts at improving the Sub Commission's working methods do not appear to have resolved some very fundamental concerns about this institution and the Bureau agrees that fundamental reform measures must be considered". It then goes on to say that the Sub Commission is the most expensive of all the Commission on Human Rights mechanisms and that its cost is more than that of the Commission on Human Rights itself. The Bureau also comments that it is difficult to discern the unique and specific value added role that the Sub Commission plays, that its focus is diffused, there is overlapping with the Commission on Human Rights, there is a proliferation of projects and that its working methods are politicized and resemble that of the Commission on Human Rights rather than a body of independent experts. It is evident from these comments that the Sub Commission's efforts towards reforms have been completely ignored. The important role that the Sub Commission is playing in the field of ESC rights through studies such as income distribution, right of food, etc, its study on terrorism, work in the field of minorities, rights of the indigenous etc. also find no mention.

89. **Recommendation 12** of the Bureau proposes that the Sub Commission be renamed; the membership be reduced to 15 persons nominated by the Chairman of the Commission on Human Rights in consultation with the Bureau (yet another instance of efforts to expand the role of the Chairman and Bureau at the expense of the CHR general membership and regional groups); each expert serve a maximum of two four year terms; members should not be concurrently employed in the executive branch of the Government and that the length of the session be reduced to two weeks. It says that the Sub Commission should focus on the elaboration of studies, research and expert advice. It should submit analytical reports and not negotiate resolutions. It should dedicate adequate time to private deliberations. It should continue to conduct an annual debate on human rights violations in all parts of the world and this debate should be submitted in a summary to the Commission on Human Rights as part of the Sub Commission's annual report. The Sub Commission's Working Group's on minorities and indigenous populations should continue, the latter until such time the issue of a Permanent Forum for indigenous issues is resolved. Finally, the Bureau recommends that these reforms be effected by the 56th session in 2000 AD.

90. The biggest concern with regard to the Sub Commission expressed by a large number of countries in the past has been its action with regard to country situations. The Bureau's recommendations in this regard are good and welcome in so far as it proposes a complete abolition of the practice of passing all resolutions, including country resolutions and a reaffirmation of the Sub Commission's "think tank" role. The Bureau however, recommends a retention of the country situations debate and suggests that a summary be forwarded to the Commission on Human Rights, despite the fact that the main area of duplication between the Sub Commission and Commission on Human Rights in the Country Sitatuions debate. In fact, this debate is also the main cause of politicization of the Sub Commission.

91. As regards, reducing the length of annual sessions of the Sub-Commission it should be pointed out that any such exercise must be dependent on the program of work and agenda of the annual sessions, not on arbitrary guidelines. Flexibility in this respect will be more conducive to

the preservation of the relevance of the Sub-Commission. It also needs to be pointed out that the the Bureau's suggestion for reducing the expert members of the Sub-Commission would have a negative impact on the geographical representation of the Sub-Commission and would undermine the need for more inputs of experts from developing countries. Considering the fact that part of the Sub-Commission's functions as a think tank is to promote a dialogue between different cultures, the more logical step is to increase the number of experts from developing countries not reduce them. Such a move would help better reflect the rich, cultural, religious and civlizational diversities of the world.

92. Yet another problem in the recommendation is the attempt to change a democratic procedure of direct election by members of the Commission on Human Rights for a non-democratic procedure of nomination by the Chair. This is clearly unacceptable. Unlike the Special Rapporteurs, members of the Sub-Commission are directly elected by the Commission and have a right to be in the Sub-Commission as long as they continue to enjoy the confidence of the Commission. This also applies to the matter of Sub-Commission members holding office in the executive branch of the Government etc.

93. The Sub Commission has been improving its methods of work and is undertaking important studies in the field of Economic, Social and Cultural Rights, terrorism, etc. It is our view that there is no reason whatsoever to proceed in such haste to a virtual dismantlement of the entire body.

Alternate Recommendation 19 - Bureau's recommendation 12 should be accepted without changing election procedure, the size of the body or reducing the session. The proposal to forward a compilation of debates in the Sub-Commission to the Commission on Human Rights should be rejected and the Sub Commission's debate on country situations should be completely abolished .

Chapter V - Standard setting working groups

94. **Recommendation 13** of the Bureau proposes that the Commission on Human Rights should ask the Sub Commission to prepare a draft text before initiating any new standard setting exercise, that it should agree on a specific time frame of not more than five years for any exercise , provide for breaks of a year or two if there is no progress and that all chairpersons be given a standing mandate to conduct inter sessional informal consultations. It also states that *there is no rule of procedure requiring the Commission on Human Rights, ECOSOC or General Assembly to adopt standard setting instruments by consensus and there are examples where consensus has not been achieved.* In fact, this position appears to clearly violate the spirit of the GA resolution which has been cited in the report itself. There is a need to avoid any arbitrary or specific time-frame within which working group would be called upon to complete its task. Moreover, consensus should remain the most fundamental and ultimate objective of any legislative exercise. This is a precondition for any achievement to be universal, widely implemented and respected in the field of human rights. It is regrettable that the report of the Bureau suggests the contrary.

Alternate Recommendation 20 - Amend rules of procedure to make clear that standard setting working groups must work on the basis of consensus.

Vision for the future :

95. The turn of the century is an appropriate time to discard the cold-war mentality and further reflect on what should be the guiding principles of our future work in the field of human rights for the sake of its better protection and promotion. In doing so, our effort must be to contribute to the establishment of a new and just international, political and economic world order based on the rule of the law and principles of the UN Charter.

96. Equality and mutual respect must remain the guiding principles of international relations as well as the basis for the future work of the Commission on Human Rights, especially in its decision making and consultative process.

97. Human rights should be the ideal of all mankind and should be realized through international cooperation and on the basis of equality. It should not be used as an instrument for interference in the internal affairs of states or for political gains. The improvement of the situation of human rights and its full enjoyment is a long process. No country is exempt from this obligation.

98. All human rights are universal, indivisible and interdependent. The international community should treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

99. The significance of national and regional particularities and various historical, cultural and religious backgrounds must be respected. This is essential to ensure the cultural legitimacy of solutions offered for human rights problems.

100. According to the purposes and principles of the Charter of the United Nations, international cooperation should be paramount in solving problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion. Therefore, the best way to promote and protect human rights is dialogue and cooperation rather than confrontation.

101. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Therefore, when promoting and protecting human rights, states have the right to decide on their own ways and means of implementation and priorities in accordance with the principles and purposes of the UN Charter and international law and where relevant, in the light of their national situations.

102. Working on the premises as contained in paras 100-106 above, this vision is based on the fact that promoting and protecting human rights involves two levels of action to convert human rights aspirations into reality:

- the promotion of international standards and mechanisms as well as national laws.
- the creation of a conducive socio-economic environment, internationally and nationally.

103. This paper believes that an approach which does not address fully both levels of action is necessarily incomplete especially since the second level is often overlooked. The delegations presenting this paper are of the view that the following proposals are the constituent elements of a vision for the future.

a. A need to ensure the full and effective implementation of the Vienna Declaration and Program of Action.

b. A need to strike a balance between collective rights and individual rights. The success of the review of the mechanisms can best be judged by achieving such a balance through concrete proposals such as assigning equal budgetary and human resources, to both civil and political as well as economic, social and cultural rights.

c. "Mainstreaming human rights" within the UN system is not an agreed objective because it is undefined and can easily justify abuses, conditionalities and controversies on priorities. Even if it was agreed, for the sake of argument, it requires an introductory phase in which particular rights could be mainstreamed. For many in the developing countries, Right to Development, by virtue of its encompassing all other rights as well as being a right in itself, is by far the most important right to be mainstreamed. What is therefore required is a developmental approach to human rights, keeping in mind that all human rights are indivisible and the need for adequate importance to be given to ESC rights. The "rights" based approach to development undermines human rights by creating conditionalities to "development" which is itself a basic human right.

d. The negative effects of globalization and trade liberalization greatly affects human rights and their enjoyment. These negative effects are only likely to increase along with the future development of globalization. A Commission on Human Rights equally and sincerely concerned with all rights for all peoples, cannot overrule or underestimate such a crucial fact. A separate agenda item on globalization and its impact on the full enjoyment of all human rights should, therefore, be created in Commission on Human Rights.

e. There is a need to ensure the respect of the cultural specificities in order to create a better and more fruitful dialogue and cooperation in the field of human rights. This dimension should be addressed by practical steps and concrete proposals within the exercise of the review of mechanisms in the context of, inter alia, field operations and technical cooperation.

f. There should be a consistent standard setting policy, both legally and otherwise, in approaching similar issues. States should adopt consistent positions in all standard setting exercises and avoid contradictions.

g. The review of the mechanisms is an occasion to balance the closely linked concepts of rights and responsibilities.

h. Civil society, especially NGOs, has an increasingly important role to play in the field of human rights. Therefore, there is a need to first and foremost devote more attention and study to their functioning and activities. Secondly, there is a need to develop a "Code of Conduct" for NGOs on the model of similar efforts in the humanitarian field, addressing matters such as transparency of their financing, authenticity of their objectives and the respect of their roles and mandates. Thirdly, there should be a mechanism to ensure adherence to the proposed "Code of Conduct".

i. There is a need to ensure and guarantee Official Development Assistance (ODA). Mainstreaming development this way is the only direct and credible approach to promote and protect human rights.

j. There is also a need to ensure that technical cooperation and assistance to developing countries are mainstreamed throughout the human rights system and all aspects of human rights activities carried out by the UN contain in-built programs of technical cooperation and advisory services.

k. The Committee on Economic, Social and Cultural Rights has stated in a General Comment that sanctions imposed on certain countries have negative effects on the enjoyment of human rights by their populations. This General Comment requires follow-up to ensure the full enjoyment of basic human rights of the populations of the countries concerned. In this connection, non-human rights related objectives, such as promotion of strategic, political, economic, trade or other vested interests is a concept which needs to be addressed, defined and avoided in order to ensure the depoliticization and non-selectivity in the field of human rights.

l. Further efforts to develop dialogue and cooperation in the field of human rights should be continously undertaken.

m. The role of terrorists is becoming more alarming and it directly affects the respect of human rights. It therefore needs equal attention and study. The classical view of human rights which stipulates that only the State can violate human rights is outdated and must be reviewed in the context of modern day realities.

n. The rule of consensus is the pre-requisite for attaining universal human rights. What can and should be discussed is criteria to avoid its potential abuse, but not, as suggested by the report of the Bureau, the rule of consensus itself.

o. Respect for human rights cannot be imposed by external pressures. Solutions which emerge from within societies and are adapted to their respective circumstances can alone succeed. In this context, emphasis must be placed on national legislation and

national institutions in order to ensure the development of a deeply rooted human rights culture within different societies.

p. Field operations of the OHCHR, as currently structured, are of questionable value. Any field operation should be undertaken only in exceptional circumstances after adequate justification of the circumstances has been provided and following a clear inter-governmental mandate. The primary focus of all such operations should be to build national capacities and enable the country concerned to stand on its own feet at the earliest. Emphasis in this regard must be given to the maximum utilization of appropriate expertise available in developing countries.

q. Field operations which have been established with the primary objective of monitoring should be converted into technical cooperation projects as rapidly as possible and all international monitoring should be replaced by national institutions. A clear policy in the above regard should be developed and implemented by the OHCHR in close consultation with States and submitted to the CHR for its approval.

r. In order to ensure the objectivity and impartiality of human rights activities, the OHCHR should not enter into agreements with governments or their subsidiary bodies without a formal approval of inter-governmental bodies. This applies especially to agreements that involve the OHCHR working together and coordinating the use of resources and personnel with such governments or bodies for the objective of, inter alia, establishment of stable governments, prevention of ethnic conflicts etc.

s. It is important that voluntary financial contributions to the activities of the OHCHR do not in any way skew priorities set by inter-governmental bodies and aggravate existing imbalances between rights based on donor priorities.

t. Further efforts are required to improve protection for the human rights minorities as well as migrant populations in all countries on the basis of minimal common standards.

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Annexure

Compilation of Recommendations

- *Alternate Recommendation 1 - Establish an open ended Working Group of States to discuss L2, L105 issues, the Burau's report and proposals submitted by individual delegations.*

- *Alternate Recommendation 2 - Include the establishment of a balanced human rights program in the agenda of the above Working Group.*

- *Alternate Recommendation 3 - Include the question of effective approaches for the promotion of human rights and international cooperation towards that end in the agenda of the above WG.*

- *Alternate Recommendation 4 - Include a review of the funding and expenditure of the Office of the High Commissioner for Human Rights as well as the balanced allocation of staff and resources within the agenda of the Working Group.*

- *Alternate Recommendation 5 - The Commission on Human Rights should reaffirm through a resolution or a decision the voluntary nature of cooperation of States with mechanisms .*

- *Alternate Recommendation 6 - Include the issues in paras.42 and 45 of the report in the agenda for discussions of the above Working Group.*

- *Alternate Recommendation 7 – (a) include an in- depth review of the country situations item within the agenda of the Working Group; (b) all discussions on "country situations" under this item should be held in confidential sessions; (c) Consideration shall be given to biennialise the examination of human rights situations in countries which are at present subject to annual resolutions if objective non-political elements justify it; (d) the Bureau should provide arrangements for negotiations on country situation resolutions. The negotiations should be chaired by a member of the Bureau with the participation of the representative of the sponsors and the representative of the country concerned; (e) there should be periodical review of monitoring of country situations with a view to heir termination, according to objective non-political merits of each situation; (f) ways and means of ensuring objective non-political criteria for the initiation and termination of country situation resolutions should be sought.*

- *Alternate Recommendation 8 - Include within the agenda of the above WG concrete ways and means to enhance resources for the technical cooperation program, including the allocation of specific percentages within the OHCHRs' regular budget for this purpose .*

- *Alternate Recommendation 9 - Bureau's recommendations 3 should be rejected and the Commission on Human Rights should adopt a procedural motion clarifying that all appointments should be made only with the approval of regional groups*

- *Alternate Recommendation 10 – The Commission on Human Rights should adopt a procedural motion clarifying that only States have a locus standi to nominate candidates and that the national of a State should not be appointed without its consent.*

- *Alternate Recommendation 11 – The Office of the High Commissioner for Human Rights should be asked to issue letters to all states inviting nominations of candidates to form part of its roster and to publish on an annual basis a report containing an updated list of experts on all its rosters with their qualifications, nationality etc.*

- *Alternate Recommendation 12 - Proposal 4 should be rejected. The Commission on Human Rights should determine the code of conduct and evaluate the performance of the mechanisms. The draft resolutions L.86-87 of 1997 should be revived.*

- *Alternate Recommendation 13 - Commission on Human Rights should determine what goes into the Manual referred to in Observation 16.*

- *Alternate Recommendation 14 - Ways and means of fine tuning NGO participation so as to improve the efficiency of the Commission on Human Rights and Sub Commission sessions should be comprehensively discussed and amendments , as required, proposed to the ECOSOC procedures on NGO accreditation and participation.*

- *Alternate Recommendation 15 – The Commission on Human Rights should determine the contents of the "basic terms of reference" mentioned in Observations 18 & 19.*

- *Alternate Recommendation 16 - Bureau's Observation 20 should be made a mandatory practice*

- *Alternate Recommendation 17 - Coordination of communications should be the principal issue on the agenda of the meetings of Special Procedures. All such meetings should be open to Governments.*

- *Alternate Recommendation 18 - Status quo should be retained on the 1503 procedure with provision for the Working Group on Communications to meet twice every year,*

- *Alternate Recommendation 19 - Bureau's recommendation 12 should be accepted without changing election procedure, the size of the body or reducing the session. The proposal to forward a compilation of debates in the Sub-Commission to the Commission on Human Rights should be rejected and the Sub Commission's debate on country situations should be completely abolished*

- *Alternate Recommendation 20 - Amend rules of procedure to make clear that standard setting working groups must work on the basis of consensus*

- *Comment 1 - Recommendation 2 of the Bureau should be rejected outright.*
- *Comment 2 - Recommendation 4 of the report is within the mandate of ECOSOC and not within the competence of the Commission on Human Rights*
- *Comment 3 - The second part of Bureau's Recommendation 5 should be rejected*
- *Comment 4 - The second part of Bureau's Recommendation 6 should be rejected*
- *Comment 5 - Bureau's Proposal 3 should be rejected*
- *Comment 6 - Proposal 5 should be rejected as impractical and un-implementable*
- *Comment 7 - Bureau's recommendation 7 should be rejected*
- *Comment 8 - Bureau's Recommendation 8 should be rejected as superfluous and duplicative*
- *Comment 9 - Bureau's Recommendation 9 should be rejected as superfluous and duplicative*
- *Comment 10 - Bureau's Recommendation 10 should be rejected as superfluous, duplicative and a threat to the credibility and impartiality of the Bureau*
- *Comment 11 - Bureau's Observation 24 should be rejected. The primary role of the Office of the High Commissioner for Human Rights in technical cooperation should be emphasized.*

Vision for the Future

a. *Full and effective implementation of the Vienna Declaration and Program of Action.*

b. *Need to strike a balance between collective and individual rights- civil and political as well as economic, social and cultural rights.*

c. *Mainstreaming the Right to Development .*

d. *Examining how the negative effects of globalization and trade liberalization affect human rights and their enjoyment.*

e. *Need to respect cultural specificities in order to establish a genuine and fruitful dialogue and cooperation in the field of human rights.*

f. *Evolving a consistent policy towards standard setting.*

g. *Balancing rights with responsibilities.*

h. *Developing a "Code of Conduct" for the civil society on the model of similar efforts in the humanitarian field.*

i. *Ensuring and guaranteeing official development assistance and technical cooperation to developing countries in the field of human rights.*

j. *Mainstreaming of technical cooperation and assistance to developing countries throughout the human rights system.*

k. *Ensure depoliticization and non-selectivity in the field of human rights by addressing non-human rights related objectives.*

l. *Developing further dialogue and cooperation in the field of human rights.*

m. *Greater examination of the relationship between terrorism and human rights.*

n. *Acknowledging the rule of consensus as the pre-requisite for attaining universal human rights.*

o. *Emphasis on national legislation, national institutions and the creation of a human rights culture.*

p. *Maximum utilization of the expertise available in developing countries in all human rights activities.*

q. *Shifting the focus of all field operations towards building national capacities.*

r. *Intergovernmental bodies must approve any agreement entered into by the OHCHR with individual governments or their subsidiary bodies.*

s. *Voluntary financial contributions should not skew priorities set by the inter-governmental bodies and aggravate existing imbalances between rights, based on donor priorities.*

t. *Improving protection for the rights of minorities and migrants.*

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